

Appl. No. 10/054,628
Atty. Docket No. 7571RD
Reply Dated May 16, 2005
Reply to Office Action of Dec. 14, 2004

REMARKS

Claims 1-4 are pending in the present application and stand rejected. Claims 5-11 are new. Support for claims 5-11 may be found in Claim 1 and in the specification, page 16, line 14 to page 21, line 6. No new matter is believed to have been added. Consequently, entry of these amendments is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 1-4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,609,587 to Roe (hereafter "Roe") in view of U.S. Patent No. 5,416, 158 to Santhanam et al. (hereafter "Santhanam"). The Office's reasoning for the rejection was provided in the Office Action dated December 14, 2004 (hereafter "Paper 20041210"). With regard to Claim 1, the Office states:

Roe discloses the present invention substantially as claimed. However, Roe does not disclose the exact amount of a rheological agent present in the lotion composition. Roe teaches the lotion composition can have optional components, such as a stabilizer. Roe recognizes the amount of components can be varied and this will affect the viscosity of the lotion composition. Roe, therefore recognizes the stability of the composition is a result effective variable of percentage of components used, including the percentage of the rheological agent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Roe with the claimed amount of rheological agent, since discovering an optimum value of a results effective variable involves only routine skill in the art.

The Office further states:

Roe does not specifically disclose the use of the claimed rheological agents. Santhanam discloses the claimed rheological agents in personal care products to impart a smooth feel and texture to the products. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the skin care composition of Roe to include one of the claimed rheological agents for the benefits taught in Santhanam.

Applicant traverses this rejection.

Roe discloses a diaper containing a liquid pervious topsheet coated with a lotion composition. *See Abstract.* Roe discloses that the lotion compositions comprise "(1) a liquid polyol polyester(s) emollient; (2) an immobilizing agent(s) for the liquid polyol polyester(s) emollient; (3) optionally a hydrophilic surfactant(s); and (4) other optional components." *Col. 10, lines 38-42.* Roe discloses a list of optional components including "viscosity modifiers." *Col. 23, lines 32.*

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Santhanam relates to "crosslinked carboxylic copolymers comprising an unsaturated carboxylic acid; a comonomer containing a polymerizable ethylenically unsaturated group, a crosslinking monomer selected from the group consisting of triallylisocyanurate, triallyl trimellitate, and glyoxal bis(diallyl acetal) and an ethoxylated glyceride compound." See *Abstract*. In the Background section, Santhanam states, "Materials that are capable of providing rheological properties including thickening to aqueous compositions find a variety of applications in cosmetic and pharmaceutical formulations, as well as other personal care products, in the form of creams, pastes, gels, ointments, and emulsions." Col. 1, lines 20-25.

The hypothetical combination of Roe and Santhanam presumably results in a diaper containing a liquid pervious topsheet coated with a lotion composition as disclosed by Roe. The lotion composition presumably comprises a liquid polyol polyester(s) emollient; an immobilizing agent for the liquid polyol polyester emollient; optionally a hydrophilic surfactant; and other optional components, wherein one of the optional components is a material capable for providing rheological properties as taught by Santhanam such as synthetic polymers.

Applicant traverses the rejection because (i) the patents relied upon by the Office teach away from the proposed combination, (ii) combination of the patents will render the device as disclosed in Roe unsatisfactory for its intended purpose, and (iii) Santhanam is nonanalogous art to the present invention.

(i) Teaches Away - Roe and Santhanam may not be combined because the patents teach away from the proposed combination. The Office asserts the motivation for combining the patents lies in that "Santhanam teaches synthetic polymers as rheological additives are preferred due to their resistance to biodegradation and their ability to thicken personal care aqueous compositions with a smooth feel and smooth texture." *Paragraph 4, Advisory Action dated March 29, 2005 (Paper 20050324)*. However, the Office has failed to appreciate the nature of the lotion as disclosed in Roe.

Roe repeatedly teaches that the lotion and its components are substantially free of water. Roe states, "The emollients useful in the present invention are also substantially free of water." Col. 15, lines 37-38. All of the examples taught in Roe disclose a "water free lotion composition." Col. 26, line 62 and Col. 27, line 7. Conversely, Santhanam teaches "[m]aterials that are capable of providing rheological properties including thickening to aqueous compositions." Col. 1, lines 20-21. Case law states that a "reference may be said to

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teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Roe teaches “water free lotion compositions” and Santhanam teaches “[m]aterials that are capable of providing rheological properties including thickening to aqueous compositions.” Applicant asserts that a person of ordinary skill in the art would clearly be discouraged from following combining the references as suggested by the Office since Santhanam is directed to aqueous compositions and Roe discloses “water free lotion composition[s].” As a result, the Office has failed to make a *prima facie* case of obviousness since the patents relied upon were not considered in their entirety including portions that lead away from their combination.

(ii) Combination Renders the Device of Roe Unsatisfactory for its Intended Purpose -

In the combination asserted by the Office, the lotion is either substantially water free as disclosed in Roe or the lotion is aqueous so that the materials disclosed in Santhanam may be used. When the lotion is substantially water free, Santhanam teaches away from the proposed combination since its materials are directed to aqueous compositions, as discussed above. If the lotion is aqueous such that the materials of Santhanam may be used, the combination of Roe and Santhanam will destroy functional utility of the absorbent article disclosed in Roe.

Roe is directed to disposable absorbent articles. Roe discloses that the disposable absorbent article such as a diaper has a topsheet with a lotion coating disposed thereon. *Col. 3, lines 1-4*. If the Office asserts that the lotion is aqueous so that the materials of Santhanam may be used, then an aqueous composition is being applied to an absorbent article. One skilled in the diaper arts would recognize that this is to be avoided. Roe discusses how components of the lotion can migrate to the interior of the diaper to cause undesirable effects on the absorbency of the diaper core. *See Col. 18, lines 11-15*. Applying an aqueous lotion to the diaper could also result in migration of the water into the core. This would result in a pre-loading of the diaper which may result in decreased absorbency of the diaper for body exudates. Such a result renders the absorbent article of Roe unsatisfactory for its intended purpose of absorbing body exudates, which are often aqueous. As a result, the Office has failed to make a *prima facie* case of obviousness since the proposed combination of patents relied upon render the patented device unsatisfactory for its intended purpose.

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(iii) Reliance on Nonanalogous Art The Office is relying on art that is nonanalogous to the present invention. The present invention is directed to an absorbent article having a vapor permeable backsheet, a liquid pervious topsheet which is positioned in facing relation with said backsheet, an absorbent core located between said backsheet and said topsheet, and a skin care composition on at least a portion of a wearer-contacting surface of said absorbent article. The present invention is within the field of absorbent articles for collecting body exudates. Santhanam relates to carboxylic copolymers that are useful as thickeners in aqueous solutions. Santhanam is not within the field of absorbent articles. Furthermore, the Santhanam is not relevant to the problem of lotions used in absorbent articles since such lotions are generally anhydrous or substantially water-free. Santhanam is directed to aqueous systems. As a result, the Office has failed to make a *prima facie* case of obviousness since the Santhanam reference is not in the field of the present invention

Since Claim 1 is nonobvious in light of the arguments presented above, Claims 2-4 and new Claims 5-11, dependent from and containing all the limitations of Claim 1, are likewise nonobvious.

CONCLUSION

Based on the foregoing amendment and reasons, Applicant respectfully submits that the Office has not made a *prima facie* case of obviousness and the rejections are therefore improper. Reconsideration and withdrawal of the rejections are respectfully requested. Allowance of each of the pending claims is earnestly requested so that the Request for Interference as submitted on January 22, 2002 may be granted.

Respectfully Submitted,

The Procter & Gamble Company

By 

Eric T. Addington

Registration No. 52,403

Tele. No. (513) 634-1602

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Customer No. 27752